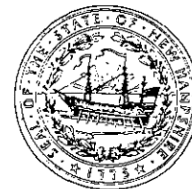




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.
November 3, 2003

Portsmouth Chevrolet-Oldsmobile
Attn: Walter Ferrara, Service Manager
2025 Woodbury Avenue
Newington, NH 03801

Re: Docket No. AF 03-022 - Administrative Fine by Consent Agreement

Dear Mr. Ferrara:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Frederick J. McGarry, P.E., Waste Management Division Acting Director, and accepted by Commissioner Michael P. Nolin on October 31, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael Seligani,
Legal Assistant

cc: Frederick J. McGarry, P.E., Acting Director, Waste Management Division
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, Hearings and Rules Attorney
Mark R. Harbaugh, DES Legal Unit
Linda Birmingham, DES WMD



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Portsmouth Chevrolet-Oldsmobile
2025 Woodbury Avenue
Newington, NH 03801

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 03-022

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Portsmouth Chevrolet-Oldsmobile, pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH.
2. Portsmouth Chevrolet-Oldsmobile, ("Portsmouth Chevrolet") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on December 18, 1997. Portsmouth Chevrolet has a mailing address of 2025 Woodbury Avenue, Newington, NH.

III. BACKGROUND

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Portsmouth Chevrolet is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on January 7, 1998. EPA Identification Number NHD018962621 was assigned to Portsmouth Chevrolet's site located at 2025 Woodbury Avenue, Newington, NH.
4. On April 11, 2002, DES personnel inspected Portsmouth Chevrolet for compliance with RSA 147-A and its implementing regulations, the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency No.

WMD 02-27 ("LOD") to Portsmouth Chevrolet on September 27, 2002. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. Allegations, Administrative Fines

1. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to conduct waste determinations on two (2) 55-gallon containers of unknown contents located behind the building, as required by Env-Wm 502.01 ("Violation 1"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination, for a potential fine of \$3,000.
2. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to complete a subsequent notification form, as required by Env-Wm 504.02(d) ("Violation 2"). Env-C 612.08(e), which references Env-Wm 504.02(c) modified in August 2000 to Env-Wm 504.02(d), authorizes a fine of \$500.
3. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to provide secondary containment for hazardous waste containers in areas with functional floor drains (*i.e.*, paint shop and service shop satellite), as required by Env-Wm 507.01(c) ("Violation 3"). Env-C 612.06(e) authorizes a fine of \$2,000 per non-conforming storage area, for a potential fine of \$4,000.
4. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to mark one (1) 55-gallon container of hazardous waste in the paint shop with the beginning accumulation date, as required by Env-Wm 507.03(a)(1)a. ("Violation 4"). Env-C 612.06(k) authorizes a fine of \$250 for each container that is greater than 55-gallons or greater.
5. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to mark one (1) 55-gallon container of hazardous waste with the words that identify the contents of the container, as required by Env-Wm 507.03(a)(1)c. ("Violation 5"). Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater.
6. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to conduct inspections of the hazardous waste storage area for twenty-eight (28) weeks (*i.e.*, six (6) months during 2001 and one (1) month during 2002), as required by Env-Wm 509.02(a)(1) ("Violation 6"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area per week, for a potential fine of \$28,000.
7. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to perform initial hazardous waste training for two (2) employees with hazardous waste management duties, as required by Env-Wm 509.02(a)(2) ("Violation 7"). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training, for a potential fine of \$3,500.
8. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to post "No Smoking" signs near ignitable waste (D001) in the paint shop, as required by Env-Wm 509.02(a)(3), which references 40 CFR Part 265.17 ("Violation 8"). Env-C 612.07(c) authorizes a fine of \$2,000 per requirement for ignitable, reactive, or incompatible waste.

9. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to have a contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 9"). Env-C 612.07(e) authorizes a fine of \$2,000.

10. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to post a complete emergency postings at the nearest telephone to the hazardous waste storage area (*i.e.*, paint shop), as required by Env-Wm 509.02(b) ("Violation 10"). Env-C 612.07(h) authorizes a fine of \$1,000 per area.

11. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to ensure that thirteen (13) 10-gallon containers of used oil are closed at all times, unless oil is being added to or removed from the container, as required by Env-Wm 807.06(b)(5) ("Violation 11"). Env-C 612.10(b)(2), which references Env-Wm 807.06(b)(3) modified in August 2000 to Env-Wm 807.06(b)(5), authorizes a fine of \$100 for each container that is more than 5-gallons but less than 55-gallons, for a potential fine of \$1,300.

12. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to mark or label each individual item of universal waste (*i.e.*, batteries and antifreeze) with the date it became a waste or was received, as required by Env-Wm 1102.04(a)(2)b. ("Violation 12"). Pursuant to Env-C 610, which references Env-Wm 1102.04(a)(2)b., DES is seeking a fine of \$100.

13. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to maintain an inventory system on-site that identifies the date each universal waste became a waste or was received, as required by Env-Wm 1102.04(a)(2)c. ("Violation 13"). Pursuant to Env-C 610, which references Env-Wm 1102.04(a)(2)c., DES is seeking a fine of \$100.

14. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to cover the containers of waste antifreeze that were stored outdoors, as required by Env-Wm 1102.05 ("Violation 14"). Pursuant to Env-C 610, which references Env-Wm 1102.05, DES is seeking a fine of \$150.

15. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to inform all employees who handle or have responsibility for managing universal waste (*i.e.*, batteries and antifreeze) of the proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility, as required by Env-Wm 1103.03 ("Violation 15"). Pursuant to Env-C 610, which reference Env-Wm 1103.03, DES is seeking a fine of \$550.

16. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to clearly label or mark universal waste batteries or containers holding batteries with one, two, or all of the following: "Universal Waste-Battery(ies)", "Waste Battery(ies)" or "Used Battery(ies)", as required by Env-Wm 1109.04 ("Violation 16"). Pursuant to Env-C 610, which references Env-Wm 1109.04, DES is seeking a fine of \$200.

17. Specifically, as stated in the LOD, Portsmouth Chevrolet failed to clearly label containers holding antifreeze with one, two, or all of the following: "Universal Waste-Antifreeze", "Waste Antifreeze" or "Used Antifreeze", as required by Env-Wm 1114.04 ("Violation 17"). Pursuant to Env-C 610, which references Env-Wm 1114.04, DES is seeking a fine of \$200.


V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 1, 4, 5, 8, and 11 through 17 because they are not Class I violations.
2. Portsmouth Chevrolet agrees to pay \$8,300 as itemized below for Violations 2, 3, 6, 7, 9, and 10, which are Class I violations, upon execution of this Agreement by Portsmouth Chevrolet.
 - a. Violation 2 is a Class I violation. DES has determined that due to the fact that Portsmouth Chevrolet's generator status changed from NH Small Quantity Generator ("SQG") to NH Full Quantity Generator ("FQG") on an intermittent basis that a 10% reduction should be applied. DES is thus seeking a fine of \$450.
 - b. Violation 3 is a Class I violation. Portsmouth Chevrolet provided information that the paint shop room walls were designed to prevent leaks from being released. DES believes that the fine for the paint shop should be waived. DES has determined due to the fact that the service shop satellite is a satellite area, that the fine should be reduced to \$1,000 which is the fine for violating any of the satellite storage provisions. DES is thus seeking a fine of \$1,000.
 - c. Violation 6 is a Class I violation. Portsmouth Chevrolet failed to conduct inspections of the hazardous waste storage area for twenty-eight (28) weeks. DES has determined due to the fact that Portsmouth Chevrolet generated less than 100 kilograms of hazardous waste per month (indicative of a NH SQG) six (6) months in 2001 and seven months in 2002, and due to the fact that Portsmouth Chevrolet, with assistance from the New Hampshire Automobile Dealers Association, is implementing waste minimization techniques to attempt to change generator status to a SQG, for settlement purposes only, DES is seeking a fine for one count of failing to conduct inspections. DES is seeking a fine of \$1,000.
 - d. Violation 7 is a Class I violation. DES has determined that due to the fact that Portsmouth Chevrolet's generator status changed from SQG to FQG on an intermittent basis that a 10% reduction should be applied. DES is thus seeking a fine of \$3,150.
 - e. Violation 9 is a Class I violation. DES has determined that due to the fact that Portsmouth Chevrolet's generator status changed from SQG to FQG on an intermittent basis that a 10% reduction should be applied. DES is thus seeking a fine of \$1,800.
 - f. Violation 10 is a Class I violation. DES has determined that due to the fact that Portsmouth Chevrolet's generator status changed from SQG to FQG on an intermittent basis that a 10% reduction should be applied. DES is thus seeking a fine of \$900.
3. Payment under Section V. Paragraph 2 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

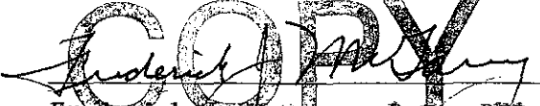
4. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
5. By executing this Agreement, Portsmouth Chevrolet waives its right to a hearing on or any appeal of the administrative fines identified in Section IV. Paragraphs 1 through 17, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
6. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Portsmouth Chevrolet, and the Director of the Waste Management Division, and the Commissioner of DES.
7. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

PORTSMOUTH CHEVROLET-OLDSMOBILE



By: Anthony DiLorenzo, President
Duly Authorized

10-13-03
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES


Frederick J. McCarry, P.E., DHE
Acting Director
Waste Management Division

29 Oct. 2003
Date


Michael P. Nolin, Commissioner

10/31/03
Date